

Before The
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Investigation of Tariffs Filed by
ACS Of Anchorage, Inc., and the
National Exchange Carrier
Association**

**December 17, 2001
MAG Access Charge Tariff Filings**

CC Docket No. 02-36

CCB/CPD No. 01-23

**Opposition of ACS of Anchorage, Inc., on the Direct Case of
the National Exchange Carrier Association**

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April 4, 2002

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**Opposition of ACS of Anchorage, Inc., on the Direct Case of
the National Exchange Carrier Association**

ACS of Anchorage, Inc. ("ACS") hereby opposes the Direct Case of the National Exchange Carrier Association ("NECA") prepared in support of its common line tariff filed to take effect January 1, 2002 (the "NECA January 2002 Tariff"). In reallocating the costs of line-side local switch ports to the common line rate elements, NECA improperly increased ACS's annual common line revenue requirement by \$1,083,238 *less* than the amount ACS deducted from its local switching revenue requirement in preparing its own traffic-sensitive tariff filed to take effect January 1, 2002 (the "ACS January 2002 Tariff").

While apparently inadvertent, NECA's improper use of *traffic-sensitive* data from an ACS cost study that supported the prior NECA *common line* tariff has harmed ACS. ACS therefore requests that the Commission order NECA to increase ACS's common line revenue requirement used to prepare the NECA January 2002 Tariff by \$1,083,238 on an annualized basis.

I. BACKGROUND

ACS participates in the common line pool tariff administered by NECA, but files its own traffic-sensitive tariff. For carriers in this situation, the Commission directed in the *MAG*

Tariff Filing Order that, “shifts in revenue requirement to the NECA common line pool tariff from . . . another ILEC’s traffic-sensitive tariff should reflect equivalent adjustments to the underlying revenue requirements.”¹

NECA’s Direct Case in this investigation confirms that, in preparing the NECA January 2002 Tariff, NECA shifted an annual amount of \$1,501,194 to the common line pool revenue requirement attributable to ACS.² This figure was based on cost studies ACS provided to NECA in March 2001 that used 2000 data and that (1) projected common line and traffic-sensitive revenue requirements for the tariff year from July 1, 2001 through June 30, 2002; and (2) treated the traffic-sensitive costs of ISP-bound traffic as intrastate, in accordance with the Commission’s *GCI Order*.³

ACS, in contrast, reduced its annual traffic-sensitive revenue requirement by \$2,584,432, an amount equal to 30 percent of its local switching revenue requirement taken from the cost support for its most recently filed traffic-sensitive tariff, which was filed to take effect July 1, 2000 (the “July 2000 Tariff”). The cost support was prepared using 1999 data for the tariff year commencing July 1, 2000. As a result of the use of differing figures prepared at different times by ACS and NECA, ACS improperly suffered a decline in its overall interstate revenue requirement of \$1,083,238 annually.

¹ *December 17, 2001 MAG Access Charge Tariff Filings*, 16 FCC Rcd 20960 (Comp. Pricing Div. 2001) (“*MAG Tariff Filing Order*”), at para. 3.

² NECA Direct Case at Exhibit 1, Column E. NECA computes the revenue requirements shown in Exhibit 1 for only a six-month period. The NECA line-side port figure shown, \$750,597, on an annual basis, is \$1,501,194.

³ *General Communication, Inc. v. Alaska Communications Systems Holdings*, 16 FCC Rcd 2834 (2001) (“*GCI Order*”).

II. NECA'S USE OF ACS'S MARCH 2001 COST STUDY TO PREPARE THE NECA JANUARY 2002 TARIFF VIOLATED COMMISSION ORDERS

By using ACS's March 2001 cost study (which incorporated 2000 cost and demand data) to prepare the NECA January 2002 Tariff, NECA improperly created a mismatch between the data it used to prepare the NECA January 2002 Tariff and the data ACS used to prepare the ACS January 2002 Tariff. This action violated the Commission's directive in the *Rate-of-Return Access Charge Reform Order* that its rate restructuring was to be revenue-neutral.⁴ This is true whether the Commission finds that (as ACS believes) ACS properly determined its line port costs using the baseline revenue requirement that supported its July 2000 Tariff, or that ACS should have used the restated revenue requirements contained in its direct case. By using 2000 data to prepare the NECA January 2002 Tariff, while ACS used 1999 data, NECA in either case reduced the overall level of ACS's interstate revenue requirement. As discussed above, ACS believes that this shortfall totals \$1,083,238. As reflected in NECA's Direct Case, however, NECA's decision to use the year 2000 data contained in the March 2001 cost study cost ACS an annualized minimum of \$145,498, even assuming that the use of the restated data in ACS's Direct Case would have been proper.⁵

Furthermore, this "mismatch" violated the Commission's *MAG Tariff Filing Order*.⁶ In that Order, the Commission specifically addressed the situation at hand, stating that

⁴ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19,613 (2001) ("*Rate-of-Return Access Charge Reform Order*"), at para. 12 ("The rate structure modifications we adopt do not affect overall recovery of interstate access costs"); *MAG Tariff Filing Order* at para. 3.

⁵ NECA Direct Case, Exhibit 1, Column H (the six-monthly figure shown, \$72,749, becomes \$145,498 on an annual basis).

⁶ "*MAG Tariff Filing Order*" at para. 3.

revenue requirement shifts to the NECA common line tariff from individual carrier traffic-sensitive tariffs must be equivalent.⁷ The *MAG Tariff Filing Order*, therefore, obligated NECA to add to the common line pool revenue requirement an amount precisely equal to the amount ACS subtracted from its own traffic-sensitive revenue requirement, in this case, an annual amount of \$2,584,432.

The *MAG Tariff Filing Order* permitted neither ACS nor NECA to use the 2000 data contained in ACS's March 2001 cost study. The *MAG Tariff Filing Order* stated that, "all calculations should be based on the demand data used in the last annual tariff filing made by the carrier."⁸ The relevant traffic-sensitive data in the March 2001 cost study had never been used to support any prior tariff. ACS did not file a traffic-sensitive tariff in 2001. Furthermore, ACS's traffic-sensitive data had no bearing on the NECA common line or traffic-sensitive tariffs filed in 2001. Even though the traffic-sensitive data was contained in the cost study that supported NECA's common line pool tariff filed to take effect July 1, 2001, that data was not "used in the last annual tariff filing *made by the carrier*"⁹ because (1) the data was not "used" to calculate the July 2001 NECA common line rates; and (2) NECA, in any event, is not a "carrier."

III. RELIEF SOUGHT

ACS therefore requests that the Commission order NECA, effective January 1, 2002, to correct its apparently inadvertent error by increasing ACS's portion of the common line pool revenue requirement by an annualized amount of \$1,083,238, consistent with ACS's use of the traffic-sensitive demand data used to support its July 2000 Tariff. Such a requirement would most closely comply with the Commission's order to use the demand data "used in the last

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* (emphasis supplied).

annual tariff filing made by the carrier” and for NECA and ACS to make “equivalent adjustments to the underlying revenue requirements.”

If the Commission nevertheless decides that ACS should have prepared its January 2002 Tariff using the restated data contained in its Direct Case, then the Commission should also determine that NECA was required to use the same figures. In such a case, ACS hereby requests that the Commission order NECA to increase ACS’s portion of the common line pool revenue requirement by an annualized amount of \$145,498, effective January 1, 2002.

In either case, ACS requests that the Commission order NECA to issue a refund to ACS of the shortfall in its common line pool settlement caused by NECA’s improper use of the March 2001 cost study to prepare the NECA January 2002 Tariff.

Respectfully submitted,

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April 4, 2002

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Certificate of Service

I, Denise Oden, hereby certify that a copy of the foregoing ACS of Anchorage, Inc., Direct Case, was served, via messenger (except otherwise noted) on the following persons this 4th day of April 2002.

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